

114TH CONGRESS
2D SESSION

H. R. 5019

IN THE SENATE OF THE UNITED STATES

MAY 9, 2016

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To direct the Securities and Exchange Commission to provide
a safe harbor related to certain investment fund research
reports, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair Access to Invest-
3 ment Research Act of 2016”.

4 **SEC. 2. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.**

5 (a) **EXPANSION OF THE SAFE HARBOR.**—Not later
6 than the end of the 45-day period beginning on the date
7 of enactment of this Act, the Securities and Exchange
8 Commission shall propose, and not later than the end of
9 the 180-day period beginning on such date, the Commis-
10 sion shall adopt, upon such terms, conditions, or require-
11 ments as the Commission may determine necessary or ap-
12 propriate in the public interest, for the protection of inves-
13 tors, and for the promotion of capital formation, revisions
14 to section 230.139 of title 17, Code of Federal Regula-
15 tions, to provide that a covered investment fund research
16 report that is published or distributed by a broker or deal-
17 er—

18 (1) shall be deemed, for purposes of sections
19 2(a)(10) and 5(c) of the Securities Act of 1933 (15
20 U.S.C. 77b(a)(10), 77e(c)), not to constitute an
21 offer for sale or an offer to sell a security that is the
22 subject of an offering pursuant to a registration
23 statement that is effective, even if the broker or
24 dealer is participating or will participate in the reg-
25 istered offering of the covered investment fund’s se-
26 curities; and

1 (2) shall be deemed to satisfy the conditions of
2 subsection (a)(1) or (a)(2) of section 230.139 of title
3 17, Code of Federal Regulations, or any successor
4 provisions, for purposes of the Commission's rules
5 and regulations under the Federal securities laws
6 and the rules of any self-regulatory organization.

7 (b) IMPLEMENTATION OF SAFE HARBOR.—In imple-
8 menting the safe harbor pursuant to subsection (a), the
9 Commission shall—

10 (1) not, in the case of a covered investment
11 fund with a class of securities in substantially con-
12 tinuous distribution, condition the safe harbor on
13 whether the broker's or dealer's publication or dis-
14 tribution of a covered investment fund research re-
15 port constitutes such broker's or dealer's initiation
16 or reinitiation of research coverage on such covered
17 investment fund or its securities;

18 (2) not—

19 (A) require the covered investment fund to
20 have been registered as an investment company
21 under the Investment Company Act of 1940
22 (15 U.S.C. 80a–1 et seq.) or subject to the re-
23 porting requirements of section 13 or 15(d) of
24 the Securities Exchange Act of 1934 (15
25 U.S.C. 78m, 78o(d)) for any period exceeding

1 the period of time referenced under paragraph
2 (a)(1)(i)(A)(1) of section 230.139 of title 17,
3 Code of Federal Regulations; or

4 (B) impose a minimum float provision ex-
5 ceeding that referenced in paragraph
6 (a)(1)(i)(A)(1)(i) of section 230.139 of title 17,
7 Code of Federal Regulations;

8 (3) provide that a self-regulatory organization
9 may not maintain or enforce any rule that would—

10 (A) prohibit the ability of a member to
11 publish or distribute a covered investment fund
12 research report solely because the member is
13 also participating in a registered offering or
14 other distribution of any securities of such cov-
15 ered investment fund; or

16 (B) prohibit the ability of a member to
17 participate in a registered offering or other dis-
18 tribution of securities of a covered investment
19 fund solely because the member has published
20 or distributed a covered investment fund re-
21 search report about such covered investment
22 fund or its securities; and

23 (4) provide that a covered investment fund re-
24 search report shall not be subject to section 24(b) of
25 the Investment Company Act of 1940 (15 U.S.C.

1 80a–24(b)) or the rules and regulations thereunder,
2 except that such report may still be subject to such
3 section and the rules and regulations thereunder to
4 the extent that it is otherwise not subject to the con-
5 tent standards in the rules of any self-regulatory or-
6 ganization related to research reports, including
7 those contained in the rules governing communica-
8 tions with the public regarding investment compa-
9 nies or substantially similar standards.

10 (c) RULES OF CONSTRUCTION.—Nothing in this Act
11 shall be construed as in any way limiting—

12 (1) the applicability of the antifraud or
13 antimanipulation provisions of the Federal securities
14 laws and rules adopted thereunder to a covered in-
15 vestment fund research report, including section 17
16 of the Securities Act of 1933 (15 U.S.C. 77q), sec-
17 tion 34(b) of the Investment Company Act of 1940
18 (15 U.S.C. 80a–33), and sections 9 and 10 of the
19 Securities Exchange Act of 1934 (15 U.S.C. 78i,
20 78j); or

21 (2) the authority of any self-regulatory organi-
22 zation to examine or supervise a member’s practices
23 in connection with such member’s publication or dis-
24 tribution of a covered investment fund research re-
25 port for compliance with applicable provisions of the

1 Federal securities laws or self-regulatory organiza-
2 tion rules related to research reports, including those
3 contained in rules governing communications with
4 the public.

5 (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

6 (1) IN GENERAL.—From and after the 180-day
7 period beginning on the date of enactment of this
8 Act, if the Commission has not adopted revisions to
9 section 230.139 of title 17, Code of Federal Regula-
10 tions, as required by subsection (a), and until such
11 time as the Commission has done so, a broker or
12 dealer distributing or publishing a covered invest-
13 ment fund research report after such date shall be
14 able to rely on the provisions of section 230.139 of
15 title 17, Code of Federal Regulations, and the
16 broker or dealer's publication of such report shall be
17 deemed to satisfy the conditions of subsection (a)(1)
18 or (a)(2) of section 230.139 of title 17, Code of Fed-
19 eral Regulations, if the covered investment fund that
20 is the subject of such report satisfies the reporting
21 history requirements (without regard to Form S-3
22 or Form F-3 eligibility) and minimum float provi-
23 sions of such subsections for purposes of the Com-
24 mission's rules and regulations under the Federal
25 securities laws and the rules of any self-regulatory

1 organization, as if revised and implemented in ac-
2 cordance with subsections (a) and (b).

3 (2) STATUS OF COVERED INVESTMENT FUND.—

4 After such period and until the Commission has
5 adopted revisions to section 230.139 and FINRA
6 has revised rule 2210, for purposes of subsection
7 (c)(7)(O) of such rule, a covered investment fund
8 shall be deemed to be a security that is listed on a
9 national securities exchange and that is not subject
10 to section 24(b) of the Investment Company Act of
11 1940 (15 U.S.C. 80a–24(b)). Communications con-
12 cerning only covered investment funds that fall with-
13 in the scope of such section shall not be required to
14 be filed with FINRA.

15 (e) DEFINITIONS.—For purposes of this Act:

16 (1) The term “covered investment fund re-
17 search report” means a research report published or
18 distributed by a broker or dealer about a covered in-
19 vestment fund or any securities issued by the cov-
20 ered investment fund, but not including a research
21 report to the extent that it is published or distrib-
22 uted by the covered investment fund or any affiliate
23 of the covered investment fund.

24 (2) The term “covered investment fund”
25 means—

1 (A) an investment company registered
2 under, or that has filed an election to be treated
3 as a business development company under, the
4 Investment Company Act of 1940 and that has
5 filed a registration statement under the Securi-
6 ties Act of 1933 for the public offering of a
7 class of its securities, which registration state-
8 ment has been declared effective by the Com-
9 mission; and

10 (B) a trust or other person—

11 (i) issuing securities in an offering
12 registered under the Securities Act of 1933
13 and which class of securities is listed for
14 trading on a national securities exchange;

15 (ii) the assets of which consist pri-
16 marily of commodities, currencies, or deriv-
17 ative instruments that reference commod-
18 ities or currencies, or interests in the fore-
19 going; and

20 (iii) that provides in its registration
21 statement under the Securities Act of 1933
22 that a class of its securities are purchased
23 or redeemed, subject to conditions or limi-
24 tations, for a ratable share of its assets.

1 (3) The term “FINRA” means the Financial
2 Industry Regulatory Authority.

3 (4) The term “research report” has the mean-
4 ing given that term under section 2(a)(3) of the Se-
5 curities Act of 1933 (15 U.S.C. 77b(a)(3)), except
6 that such term shall not include an oral communica-
7 tion.

8 (5) The term “self-regulatory organization” has
9 the meaning given to that term under section
10 3(a)(26) of the Securities Exchange Act of 1934 (15
11 U.S.C. 78c(a)(26)).

Passed the House of Representatives April 28, 2016.

Attest:

KAREN L. HAAS,

Clerk.